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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,090	06/08/2007	Guenther Vogt	10191/4793	3696

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER	
TRIEU, THAI BA	
ART UNIT	PAPER NUMBER
3748	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/588,090	VOGT, GUENTHER	
	Examiner	Art Unit	
	Thai-Ba Trieu	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 July 2006* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07/27/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

The Preliminary Amendment filed on July 27, 2006 is acknowledged.

Claims 1-9 were cancelled; and

Claims 10-18 were newly added.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ***"transmission element"*** (See Claims 10 and 14-16); ***"joint head having a bearing shell"*** (See Claim 16); ***"an electromotively powered actuator"*** (See Claim 17); and ***"an electromagnetically operated actuator"*** (See Claim 18) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show ***"14"*** (See Figure 1) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "15" has been used to designate both "flange 15" (See Page 6, line 32) and "capsule holder 31 or 15" (See page 8, line 11). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10 and its dependent claims 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically,

In claim 10, lines 9, 10, 14, and 15; Claim 14, line 3; Claim 15, lines 4; and Claim 16, line 3-4, renders the claim indefinite, since it is not clear that which component(s) is/are to be considered as a transmission element. Applicant is required to identify the component(s) or to revise the claimed limitation.

Claim 10 recites the limitation ***"transmission element"*** in lines 9, 10, 14, and 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation ***"transmission element"*** in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation ***"transmission element"*** in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation ***"transmission element"*** in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Temporarily, the ***"transmission element"*** is treated as a pin/guide pin (34) of the instant application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10, 13-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando (Pub. Number EP 684 414 B1 or US Patent Number 5,501,427).

Ando discloses a device for controlling a bypass line of a supercharger in a combustion engine, comprising:

a flow-control element (10) which has a surface (16) for selectively opening and closing the bypass line conveying a gaseous medium;

a control assembly for controlling the selective movement of the flow-control element (10), wherein the control assembly includes:

a) an actuator (20) for providing an actuating motion, the actuator having a transmission element (23);

b) a support element (14) guiding the transmission element (23), wherein the support element (14) is configured to swivel about a joint position; and

c) a slotted lever (13, 13a, 13b) connected to the transmission element (23) and the flow-control element (10), the transmission element (23) causing the slotted lever (13, 13a, 13b) to swivel in order to actuate the flow-control element (10) (See Figure 5);

wherein the flow-control element (10) is stationary-mounted to the slotted lever (13, 13a, 13b) (See Figures 4-6);

wherein the actuator (20) includes a rod (20), and when the rod is moved, the transmission element (23) that is guided by the support element (14) correspondingly moves the slotted lever (13, 13a, 13b) to achieve one of a closed position and an open position of the flow-control element (See Figures 4-6); and

wherein the actuator includes a rod (20), and wherein the rod includes a joint head (Not Numbered) having a bearing shell (15) for receiving the transmission element (See Figures 4-6, Paragraphs [0022]-[0032]).

Claims 10 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Heggem (Patent Number 3,119,594).

Heggem discloses a device for controlling a bypass line of a supercharger in a combustion engine, comprising:

a flow-control element (44) which has a surface (52) for selectively opening and closing the bypass line conveying a gaseous medium;

a control assembly for controlling the selective movement of the flow-control element (44), wherein the control assembly includes:

a) an actuator (34) for providing an actuating motion, the actuator having a transmission element (40, 45);

b) a support element (46, 47, 48) guiding the transmission element (40, 45), wherein the support element is configured to swivel about a joint position; and

c) a slotted lever (50) connected to the transmission element (40, 45) and the flow-control element (44), the transmission element (40, 45) causing the slotted lever to swivel in order to actuate the flow-control element (44) (See Figures 1-3);

wherein the flow-control element (44) is stationary-mounted to the slotted lever (50) (See Figure 1);

wherein the actuator includes a rod (34), and when the rod is moved, the transmission element (40, 45) that is guided by the support element (46, 47, 48) correspondingly moves the slotted lever (50) to achieve one of a closed position and an open position of the flow-control element (See Figure 1); and

wherein a path limiter (Not Numbered; Read as outer end of slot 50) is provided on the slotted lever (50), the path limiter limiting the maximum swiveling movement of the slotted lever about the transmission element (40, 45) (See Figure 1, Column 1, lines 59-92, and Column 2, lines 1-71).

Claims 10, 13-14, and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Hastings et al. (Patent Number 6,976,359 B2).

Hastings discloses a device (20) for controlling a bypass line (52) of a supercharger (14) in a combustion engine (12), comprising:

a flow-control element (62) which has a surface (Not Numbered) for selectively opening and closing the bypass line conveying a gaseous medium;

a control assembly (20) for controlling the selective movement of the flow-control element, wherein the control assembly includes:

a) an actuator (66) for providing an actuating motion, the actuator (66) having a transmission element (92);

b) a support element (134) guiding the transmission element (92), wherein the support element is configured to swivel about a joint position; and

c) a slotted lever (96) connected to the transmission element (92) and the flow-control element (62), the transmission element (92) causing the slotted lever (96) to swivel in order to actuate the flow-control element (62) (See Figure 4);

wherein the flow-control element (62) is stationary-mounted to the slotted lever (96) (See Figure 4)

wherein the actuator includes a rod (90), and when the rod is moved, the transmission element (92) that is guided by the support element (134) correspondingly moves the slotted lever (96) to achieve one of a closed position and an open position of the flow-control element (62) (See Figure 4, Column 4, lines 5-49);

wherein a path limiter (Not Numbered, Read as outer end of 96) is provided on the slotted lever (96), the path limiter limiting the maximum swiveling movement of the slotted lever (96) about the transmission element (92); and

wherein the actuator is an electromotively powered actuator (See Column 5, lines 17-22).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Ando (Pub. Number EP 684 414 B1 or US Patent Number 5,501,427), Heggem (Patent Number 3,119,594), Hastings et al. (Patent Number 6,976,359 B2), in view of Rabe (Patent Number 4,641,545).

Ando/Heggem/Hastings discloses the invention as recited above; however, fails to disclose a guide sleeve and its configuration.

Rabe teaches that it is conventional in the art of a single lever control arrangement, to utilize a guide sleeve (62) rotatably positioned on the transmission element (64); and the guide sleeve (62) being configured to roll in a slot (60) of the slotted lever (See Figure 2).

It would has been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized a guide sleeve and its configuration, as taught by Rabe, to improve the efficiency for the Ando/Heggem/Hastings device, since the use

thereof would have provided a precise engaging movement between the guide sleeve and the slot.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Ando (Pub. Number EP 684 414 B1 or US Patent Number 5,501,427), Heggem (Patent Number 3,119,594), Hastings et al. (Patent Number 6,976,359 B2), in view of Natali (Patent Number 6,925,803 B2).

Ando/Heggem/Hastings discloses the invention as recited above; however, fails to disclose the actuator being an electromagnetically operated actuator.

Natali teaches that it is conventional in the art of an electromechanical actuator, to utilize the actuator being an electromagnetically operated actuator (See Figures 3-4, Column 3, lines 50-67, Column 4, lines 1-67, and Column 5, lines 1-37).

It would has been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the actuator being an electromagnetically operated actuator, as taught by Natali, to improve the efficiency of the turbocharged internal combustion engine , since the use thereof would have provided immediate and almost instantaneous response to the operative variations of the engine in order to optimize the regulation of the pressure existing on the compressor side of the turbocharger.

Prior Art

The IDS (PTO-1449) filed on July 27, 2006 has been considered. An initialized copy is attached hereto.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (571) 272-4867. The examiner can normally be reached on Monday - Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TTB
June 09, 2009

/Thai-Ba Trieu/
Primary Examiner
Art Unit 3748